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this Memorandum Decision shall not be  
regarded as precedent or cited before  
any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

**DAVID PAUL ALLEN**  
Hammond, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JULIA A. DARNELL,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 45A05-0609-CV-519
	)	
JOHN L. DARNELL,	)	
	)	
Appellee-Respondent.	)	

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Mary Beth Bonaventura, Special Judge  
Cause No. 45D03-0212-DR-2405

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**April 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Petitioner Julia A. Darnell (“Mother”) appeals a post-dissolution order granting in part a motion to correct error from Appellee-Respondent John L. Darnell (“Father”). We reverse and remand.

## **Issue**

Mother presents two issues for review, one of which is dispositive: whether the trial court erred by prematurely granting in part Father’s motion to correct error in contravention of the fifteen-day response time provision of Indiana Trial Rule 59.<sup>1</sup>

## **Facts and Procedural History**

On April 6, 2006, Mother filed a petition to modify child support. On April 7, 2006, Father filed a petition alleging that he had been denied parenting time. The trial court conducted a hearing on July 25, 2006. On August 1, 2006, the trial court issued an order modifying Father’s child support to \$280.70 weekly and finding Mother in contempt of court for violation of the existing parenting time order.

On August 16, 2006, Father filed a motion to correct error, challenging the calculation of child support and requesting that Mother be ordered to pay the entire cost of mediation and that he be awarded tax exemptions for both children. On the following day, the trial court granted Father partial relief by ordering that Mother pay the entire cost of mediation and awarding Father both tax exemptions. Mother now appeals.

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<sup>1</sup> Mother’s second issue challenged a substantive provision of the trial court’s order, which addressed the allocation of tax exemptions. As we reverse and remand to permit Mother to file a response to Father’s motion to correct error, Mother may direct her argument on the tax exemption allocation to the trial court.

## Discussion and Decision

At the outset, we observe that Father has not filed an appellee's brief. When an appellee does not submit a brief, an appellant may prevail by making a prima facie case of error. Gibson v. Hand, 756 N.E.2d 544, 545 (Ind. Ct. App. 2001). In this context, prima facie is defined as "at first sight, on first appearance, or on the face of it." Id. at 546. The prima facie error rule protects this Court and relieves it from the burden of controverting arguments advanced for reversal, a duty that properly remains with the appellee. Id.

Trial Rule 59(E) provides in pertinent part as follows:

Following the filing of a motion to correct error, a party who opposes the motion may file a statement in opposition to the motion to correct error not later than fifteen (15) days after service of the motion. The statement in opposition may assert grounds which show that the final judgment or appealable final order should remain unchanged, or the statement in opposition may present other grounds which show that the party filing the statement in opposition is entitled to other relief.

A trial court has inherent power to reconsider, vacate or modify any previous order so long as the case has not proceeded to final judgment. Hubbard v. Hubbard, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998). However, once a final judgment has been entered, and a motion to correct error has been filed, the trial court may not revise its order absent compliance with the requirements of Trial Rule 59. Id. Moreover, the provisions of Trial Rule 52 do not obviate the necessity of this compliance.<sup>2</sup> Id. When a motion to correct error has been filed, the

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<sup>2</sup> Trial Rule 52(B) provides in pertinent part: "Upon its own motion at any time before a motion to correct errors (Rule 59) is required to be made, or with or as part of a motion to correct errors by any party, the court, in the case of a claim tried without a jury or with an advisory jury, may open the judgment, if one has been entered, take additional testimony, amend or make new findings of fact and enter a new judgment or any combination thereof if: (1) the judgment or findings are either against the weight of the evidence, or are not supported by or contrary to the evidence; (2) special findings of fact required by this rule are lacking, incomplete, inadequate in form or content or do not cover the issues raised by the pleadings or evidence; (3)

opposing party must be given notice and an opportunity to respond to the motion prior to the trial court's ruling thereon. Id. Here, the trial court granted in part Father's motion to correct error without complying with the procedural requirements of Trial Rule 59. We therefore vacate the order of August 17, 2006, and remand with instructions for the trial court to permit Mother to respond to Father's motion to correct error.

Reversed and remanded.

SHARPNACK, J., and MAY, J., concur.

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special findings of fact required by this rule are inconsistent with each other; or (4) the judgment is inconsistent with the special findings of fact required by this rule.”